

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**THADDEUS DANIEL V. STATE OF TENNESSEE, WAYNE BRANDON,  
WARDEN**

**Appeal from the Circuit Court for Hickman County  
No. 05-5084-C R. E. Lee Davies, Judge**

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**No. M2005-02522-CCA-R3-PC - Filed March 9, 2006**

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This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petitioner has appealed the trial court's order summarily dismissing the petition for the writ of habeas corpus. In that petition, the petitioner alleges that Tennessee's habeas corpus statute and certain provisions of the Tennessee Constitution violate the ex post facto prohibition of the United States Constitution. Upon a review of the record in this case we are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition without a hearing and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Thaddeus Daniel, Pro Se, Only, Tennessee.

Paul G. Summers, Attorney General & Reporter; Brent C. Cherry, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

On November 2, 1995, the petitioner pled guilty to facilitation of first degree murder and six counts of aggravated robbery. He was sentenced to twenty years for facilitation of first degree murder and twelve years for each aggravated robbery conviction. The judgment forms do not indicate whether the sentences are to be served concurrently or consecutively.

On September 29, 2003, the petitioner filed a “writ of redress” in Hamilton County Criminal Court, alleging that he was imprisoned illegally and in violation of several provisions of the United States Constitution, but without stating any specific reason as to why his imprisonment was illegal. The Hamilton County Criminal Court treated the petition as one for habeas corpus relief and found it to be incomplete under the requirements of Tennessee Code Annotated section 29-21-107 and filed in the wrong court under Tennessee Code Annotated section 29-21-105. Further, the court noted that even if the “petition [were] complete and venue [were] proper, . . . , it would not state a claim for relief. . . . The defendant alleges neither the facial invalidity of a judgment nor the expiration of a sentence.” Consequently, the trial court dismissed the petition, and this Court affirmed the trial court’s decision on appeal. See Thaddeus Daniel v. State, No. E2003-02637-CCA-R3-PC, 2004 WL 237712 (Tenn. Crim. App., at Knoxville, Feb. 9, 2004), perm. app. denied, (Tenn. May 10, 2004).

On May 27, 2004, the petitioner filed a second petition for writ of habeas corpus in the Circuit Court of Lauderdale County, claiming ineffective assistance of counsel and alleging that his guilty pleas were involuntarily made. The Circuit Court of Lauderdale County determined that the petition was insufficient, that the petitioner’s sentence had not expired, and that the trial court had jurisdiction to impose the sentence that the petitioner was serving. The trial court dismissed the petition, finding that habeas corpus relief was not appropriate and post-conviction relief was unavailable because the petition was untimely. This Court affirmed the judgment of the trial court on appeal in Thaddeus Daniel v. David Mills, No. W2004-01460-CCA-R3-HC, 2004 WL 2821250 (Tenn. Crim. App., at Jackson, Dec. 8, 2004), perm. app. denied, (Tenn. Feb. 28, 2005).

On August 12, 2005, in the Hickman County Circuit Court, the petitioner filed the petition for writ of habeas corpus ad subjiciendum which is the subject of this appeal. In this petition he alleges that Tennessee’s habeas corpus statute and certain provisions of the Tennessee Constitution violate the ex post facto prohibition of the United States Constitution. The trial court denied relief without a hearing and without the appointment of counsel, finding that the petitioner “has alleged no ground contesting the jurisdiction of the trial court to sentence the defendant” and that the petitioner’s “sentence has not expired and the judgments are facially valid.”

A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). However, if after a review of the habeas petitioner’s filings the trial court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619, (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at \*1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

A petitioner has the burden of establishing by a preponderance of the evidence that the judgment he attacks is void or that his term of imprisonment has expired. State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291 (Tenn. 1964). If the petitioner fails to establish that his conviction is void or his term of imprisonment has expired, he is not entitled to immediate release. Passarella, 891 S.W.2d at 627-28.

In the case herein, the petitioner challenges the constitutionality of Tennessee Code Annotated section 29-21-109, which allows the trial court to “refuse” a petition where the petitioner fails to state a proper claim for relief. Specifically, the petitioner argues that because his petition was dismissed, he was somehow deprived of his right to “the full enjoyment of his constitutionally guaranteed rights encompassing the writ of habeas corpus under Art.1 § 9 (cl 2) of the United States Constitution.” Nothing in the petition alleges that the judgments against the petitioner are void or that his sentences have expired. Consequently, no grounds exist which would entitle the petitioner to habeas corpus relief.

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State’s motion filed under Rule 20 and we affirm the judgment of the trial court.

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JERRY L. SMITH, JUDGE